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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,854	12/12/2003	Charles F. Lumpkin		9214

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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 06/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/733,854

Applicant(s)

LUMPKIN, CHARLES F.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/12/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 22. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: page 6, line 17: replace the first "the" with - -that- -. Appropriate correction is required.

3. Claim 10 is objected to because of the following informalities: it is suggested that "positioning" in line 10 be replaced with - -positions- - and in line 12 that wording such as *respectively* be inserted following "disposed" to clarify that one bowl member is above and one bowl member is below the second bowl member. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6, 9 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claim 6 recites the limitations "said first diameter", "said second diameter", "said first depth", and "said second depth" in lines 1 and 2. There is insufficient antecedent basis for these limitations in the claim.

7. Claim 9 recites the limitations "said first, second and third baffle" and "said means for coupling" in lines 1 and 2. There is insufficient antecedent basis for these limitations in the claim.

8. Claim 12 recites the limitation "said internally threaded fasteners", "said T-shaped cylindrical collar" and "said shaft" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. Depending claim 12 from claim 11 would obviate this rejection.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1-9 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Wind Accents and Wind Petals Kinetic Garden Sculptures, [www.oakrunstudious.com](http://www.oakrunstudious.com), dated 07/07/2002 (Wind Accents).

Regarding claim 1, Wind Accents discloses a first, second and third baffle, wherein the first and second baffle each have a first diameter and first depth and the third baffle has a concave upper surface with a second diameter and a second depth.

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Regarding claim 2, Wind Accents discloses the first diameter being greater than the second diameter and the first depth being less than the second depth (reference side elevation photo in which the second baffle is larger in diameter and shallower in depth than the third baffle).

Regarding claim 3, Wind Accents discloses a means for supporting includes a vertically disposed nestable pole (as the pole is capable of being stacked, it thereby meets the limitation of nestable).

Regarding claim 4, as can be seen in the Figure, the first, second and third baffle have a central aperture (inherent based upon the concentric stacking of the baffles) with a means for coupling passing there through.

Regarding claims 5 and 9, reference discussion of claims 1 and 4 above.

Regarding claim 6, reference discussion of claim 2 above.

Regarding claim 7, reference discussion of claim 3 above.

Regarding claim 8, Wind Accents discloses a plurality of vertically disposed nestable pole sections (as can be seen in the Figure to include 4 pole sections).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadler, US Patent Des. 174,139 in view of Fielder et al, US Patent 4,767,088 (Fielder).

Sadler discloses a vertical support pole, a coupling assembly, a first bowl member having an outer convex surface and a base defining a central aperture (inherent), a second bowl member having an outer concave surface defining a central aperture (inherent), a third bowl member having an outer convex surface and a base defining a central aperture (inherent) wherein the coupling assembly positions the first, second and third bowl members concentrically (as seen in the Figures) such that the first and third bowl members are disposed above and below the second bowl member and the coupling assembly passing through each of the bowl members via the central aperture. However, Sadler does not disclose a multi-segmented support pole. Fielder teaches within the same field of endeavor the use of a multi-segmented support pole for the purpose of compact size for shipment (column 3, line 44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multi-segmented pole as taught by Fielder with the invention of Sadler in order to provide for more compact size during shipment.

13. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadler as modified as applied to claim 10 above, and further in view of Miller, US Patent 4,030,451.

Sadler as modified discloses the invention substantially as claimed. However, Sadler as modified does not positively disclose the coupling assembly. Miller teaches within the same field of endeavor a coupling assembly for a bird feeder including a T-shaped cylindrical collar, an elongated threaded shaft, threaded fasteners which reside in recesses about the aperture. One of skill in the art would consider the use of the threaded shaft coupling as taught by Miller to be

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an interchangeable mechanical equivalent to other known coupling mechanisms for bird feeders and as such, the modification amounts to a matter of mere obvious routine choice of design, rather than constitute a patentably distinct inventive step, barring a convincing showing of evidence to the contrary.

Regarding claim 13, Sadler as modified discloses the invention substantially as claimed with the exception of the collar being secured to the top of the pole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to secure the collar to the top of the pole, since it has been held that rearranging parts of an invention involves only routine skill in the art (*In re Japikse*, 86 USPQ 70) and that forming in one piece an article which has formerly been formed in two pieces and put together also involves only routine skill in the art (*Howard v. Detroit Stove Works*, 150 U.S. 164).

Regarding claim 14, Sadler as modified discloses each segment of the pole having a first end portion having a first diameter that nest within a second diameter (as show in Figure 1 of Fielder).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tucker (US 4,821,681), Rich et al. (D490,576), Sanderson (Des. 360,495), Cowap (Des. 170,150).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER